IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 249 of 1996

to

COMPANY PETITION No 265 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DATTABEN S. MEHTA

Versus

RAINBOW INDUSTRIES PVT.LTD

Appearance:

1. COMPANY PETITION No. 249 of 1996
   MR AR MAJMUDAR for Petitioner No. 1
   NANAVATI & NANAVATI for Respondent No. 1
   ..... for Respondents No. 2-3
2. COMPANY PETITION No. 250 of 1996
   MR AR MAJMUDAR for Petitioner No. 1
   NANAVATI & NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/12/2001

ORAL COMMON JUDGEMENT

1. Heard ld. counsel Mr. A.R. Majmudar for the petitioner in all these petitions. Mr. Pavan Godiawala appearing for Nanavati & Nanavati for respondents in all these petitions is also heard. Referring earlier orders passed by this Court, the request to adjourn the matter made by ld. counsel Mr. Godiawala has been resisted by ld. counsel Mr.Majmudar and it has been submitted that these petitions should be heard finally today.

2. I have heard ld. counsel for the parties on merits. All these petitions are filed under Sections 433 & 434 of the Companies Act, 1956 for winding up respondent company M/s Rainbow Industries Pvt. Ltd. (hereinafter referred to as the "Company"). It is contended by the petitioners that they are creditors of the respondent company. They had put their substantial amount with the respondent company by way of fixed deposit. I would like to mention the amount deposited by the petitioner of each of the company petition :-

Company Petition No.	Amount Deposited (Rs.)
249/1996	Rs. 40,000-00
250/1996	Rs.3,00,000-00
251/1996	Rs. 05,000-00
252/1996	Rs. 10,000-00
253/1996	Rs. 06,000-00
254/1996	Rs.1,00,000-00
255/1996	Rs. 10,000-00
256/1996	Rs.3,00,000-00
257/1996	Rs. 10,000-00
258/1996	Rs. 60,000-00
259/1996	Rs.3,00,000-00
260/1996	Rs. 25,000-00
261/1996	Rs. 15,000-00
262/1996	Rs. 15,000-00
263/1996	Rs. 10,000-00
264/1996	Rs. 05,000-00
265/1996	Rs. 10,000-00

3. It is contended by all the petitioners that the respondent company failed in paying interest and the amount of Fixed Deposit on maturity and this neglect to make payment is the fact sufficient to pass order of winding up the respondent company. Ld. counsel Mr. Majmudar has submitted that the respondent company is a closed company and there is no scope or hope to the

petitioner to get their respective amount back. When the petitioners were convinced that the respondent company has become commercially insolvent, they served a statutory notice in the month of June 1996 to the respondent company and to one Mr. Mitesh Desai dealing with invitation and collection of Fixed Deposits. According to ld. counsel Mr.Majmudar, said Mr. Mitesh Desai was looking after the business of the company at the relevant point of time. The present petitions are filed in the month of November,1996 as the statutory notice served to the respondent company was not responded.

4. This Court vide order dated 4.12.1996 (Coram: A.R. Dave,J), the day on which these petitions were listed on admission board, ordered issuance of notice and thereafter scrutinising the case prima facie, this Court vide order dated 11.3.1998 has admitted all these petitions. Mr. Majmudar at that relevant point of time has requested the Court to differ the publication of advertisement, but it is on record that after hearing ld. counsel appearing for the parties, this Court vide order dated 15.2.2000, directed the publication of notice of admission as per the order dated 11.3.1998. On 11.3.1998, the following order (Coram: H.L. Gokhale,J) was passed by this Court :-

> " Heard Mr. Majmudar for the petitioner and Mr. D.S. Nanavati for the respondent. The matter requires consideration. Hence, the matter is admitted. It will come up for hearing on 29th June 1998. The petitioner to advertise this admission in newspapers "The Indian Express" and the "Jansatta" of Ahmedabad Edition and also to get the notification published in the Official Gazette. "

5. I am told that the advertisement, as per the order dated 15.2.2000 (Coram: A.R.Dave,J) has been published in both the daily newspapers viz. "Indian Express" & "Jansatta", both of Baroda Edition. The advertisement in the Official Gazette is also published. Affidavit as to publication of advertisement has been filed by the petitioner of Company Petition No. 249/96. It is rightly submitted by ld. counsel Mr. Majmudar that formal affidavit of all the petitioners is not required to be filed as to publication of notice and that publication of notice in one of the winding up petitions can be said to be sufficient compliance for the purpose. Considering the settled legal proposition in this regard, this Court can pass order of winding up. Ld. counsel Mr. Godiawala has pointed out that the assets of the

company are much more than the amount claimed by the present petitioners and it would not be legal to say that the respondent company is not able to pay its debt and cannot be said to be commercially insolvent for the purpose. He also submitted that two nationalised banks viz. (i) Bank of Baroda, Mandvi Branch, Baroda, and (ii) Indian Overseas Bank, Mandvi Branch, Vadodara have advanced substantial amount to the respondent company and none of these banks have joined the present petitioner even after publication of advertisement. The aforesaid two banks, irrespective of publication of advertisement and service of notice of the winding up proceedings vide order dated 14.8.2001, have not appeared. But according to me, non-appearance of the Bank in winding up proceedings is not relevant for the purpose or would not affect adversely to the petitioners. It is very likely that they might have opted to watch the proceedings from outside. Till date, only Rs. 1 Lakh (Rs. One Lakh only) is deposited with the Court and the same is lying with the Court, because of some resistence by respondent. It is not a matter of dispute that the respondent Company has made a proposal for settlement, but because of inadequacy of the amount offered, the petitioners have not accepted the proposal. This Court would have thought otherwise, but as the respondent Company is not a going concern and it is also not disputed that an amount of Rs. 30 Lakhs (Rs. thirty lakhs only) is yet to be paid to the banks, non-payment of Fixed Deposit amount with interest to the petitioners can be termed as wilful default or neglect in paying the amount due to the petitioners. Language and scheme of sections 433 & 434 of the Companies Act, 1956 is very clear and I need not reproduce the same. I am satisfied that respondent company is a defaulter company and is commercially insolvent. I have also considered one fact reflected in the order passed by this Court at the time of admitting the petition wherein it has been stated that "at present negotiations have failed. In the circumstances, it is ordered that necessary advertisement shall have to be given in "Indian Express" & "Jansatta", Baroda Edition".

6. For the reasons aforesaid, all these 17 (seventeen) petitions are allowed. The respondent Company M/s Rainbow Industries Pvt. Ltd. is hereby ordered to be wound up. Official Liquidator attached to this Court is appointed as the Official Liquidator of the company in-liquidation and is directed to take over the assets and affairs of the respondent company forthwith. The petitioner shall arrange for publication of the order of winding up of the respondent company in the aforesaid two daily newspapers of Baroda Edition at the earliest and preferably within 15 days from today. Official

Liquidator is directed to act as per the powers conferred on him under the Companies Act, 1956 & Rules framed thereunder. Official Liquidator will be entitled to realise the expenses incurred for the purpose from the sale proceeds of the assets of the respondent company. Orders accordingly. No costs.

Registry is directed to keep copy of this common oral judgment in rest of the Company Petitions.

5.12.2001 [C.K. BUCH, J]

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